

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

PETITIONER

v.

Case No. 3:10-mc-4-DPM

**OSCEOLA NURSING HOME LLP
d/b/a OSCEOLA HEALTHCARE**

RESPONDENT

ORDER

The Court appreciates Respondent's certification of compliance, *Document No. 25*, with the Court's 9 March 2011 Order. If Osceola Nursing Home, LLP had complied so thoroughly and promptly with either the EEOC's original document requests or the EEOC's subpoena, this proceeding would have been unnecessary.

Respondent's motion for reconsideration of the Court's \$2,500.00 attorney's-fee sanction is granted. First, the Court concludes that, in the circumstances presented, it has no authority to sanction for pre-litigation conduct. Second, Respondent's willful disobedience of the Court's December 2010 show-cause order has not been established because the facts about service on Respondent (via Stafford Kees Jr.) remain murky.

There seems to have been dodging and foot dragging and hoping the

matter would go away instead of any effort to find out what the litigation was about and comply with the Court's December 2010 Order. But without more facts establishing that the Marshal read the Court's entire Order to Kees, or left a copy of it at his residence after catching Kees by telephone, the Court cannot find willful disobedience of the Order. Enough of the parties' and the Court's scarce resources have been spent on this matter. The Court therefore declines to conduct further proceedings to discern if Respondent's (and Kees's) recalcitrance rose to the level of willful disobedience.

The Court vacates that part of its 9 March 2011 Order, *Document No. 19*, awarding the attorney's fee. Respondent has complied with the remainder of that Order. This matter is concluded. And the Court directs the Clerk to close the file.

So Ordered.



D.P. Marshall Jr.
United States District Judge



15 June 2011